

# 26      *State Historic Preservation Officer (SHPO)*

## **C O N T E N T S**

Procedure .....	
Attachment to Procedure .....	
Memorandum of Understanding between SHPO and DEP .....	

**SUBJECT: State Historic Preservation Officer (SHPO)**

**DATE: December 1, 1993**

The West Virginia State Historic Preservation Office (SHPO) is authorized pursuant to Chapter 29, Article 1, Section 5 of the Code of West Virginia to review all undertakings permitted, funded, licensed or otherwise assisted in whole or in part by the State in order to carry out its duties and responsibilities under State and Federal laws.

Chapter 22, Article 3, Section 22(d)(2) of the Code of West Virginia requires joint approval by the DEP and SHPO of the issuance of permits for surface mining operations which will adversely affect any publicly-owned park or place included in the National Register of Historic Sites or the National Register of Natural Landmarks.

CSR 38-2-3.19 provides that the DEP will submit to the SHPO for its review any permit applications for surface mining operations which will adversely affect any publicly-owned park or place listed on the National Register of Historic Places or any archeological sites.

Therefore, DEP will provide to SHPO those elements of an administratively complete permit application, or permit related actions as listed in Attachment A, which are necessary for SHPO to perform its review as follows:

1. Applicant will complete Form MR-SHPO for those types of applications specified in the form and submit to the DEP Regional Office *in all copies* of the appropriate permitting application. One separate copy of the completed MR-SHPO with the following attachments will be submitted to DEP to be forwarded to SHPO for review:
  - ◇ One topographic map at a scale of 1" to 500', color coded to show the boundaries and extent of the proposed surface mining operation;
  - ◇ One topographic map of a scale of 1" to 2000' (standard USGS topographic maps) which show the boundaries of the proposed operation.

- ◇ **Include photographs of all structures** (excluding trailers and temporary buildings, any structure built within the past twenty-five years, and equipment) situated on or adjacent to the proposed operation.

*NOTES: “Adjacent” in this context means within one-thousand feet of the proposed or permitted area. All photographs must be keyed to the project map. Indicate places where photographer stood and direction the camera was aimed.*

- ◇ Applicant’s statement of the conditions of the proposed surface mining site with particular attention given to any known historic, cultural, or archeological resources, and how these resources will be protected.

2. SHPO will review and submit response to DEP within thirty (30) days of receipt. SHPO may request an extension of an additional thirty (30) days. Failure of SHPO to respond within the appropriate time period will constitute a recommendation for approval of the application. Responses received will be handled in the following manner:

- ◇ If SHPO responds that the operation will adversely affect an identified site, the DEP will require applicant to revise application to prevent the adverse impacts, or implement other protection measures jointly approved by DEP and SHPO.
- ◇ If SHPO responds that the operation, based on the application data and/or field investigations, will impact important historic, cultural, and archeological resources which are not listed or eligible for listing on the state or national registers, SHPO will describe the basis for the findings and make recommendations to DEP for further investigations to be performed by the applicant which will verify the existence or non-existence of historic and cultural resources. In the event that such exist, SHPO will again be provided an opportunity to review the applicant's proposals and provide comments and recommendations.
- ◇ SHPO comments and/or correspondence will be forwarded to the applicant for appropriate action, with copies placed in the regional application file.

3. SHPO will provide to each DEP regional office a monthly report of each application received and in the review process.

- Waiver of SHPO for previously disturbed area: SHPO could be waived by one of the following:
  1. If the topographic map shows an existing road;
  2. If the applicant submits pictures of the existing disturbed area. A site plan type map would need to be submitted with the pictures showing the location of each picture on the disturbed area to be bonded.

## ***ATTACHMENT A***

*(Revised 12/3/96)*

### Permitting Actions to be Transmitted by DEP to SHPO for Review

1. All MR-4 applications for new surface and underground mining permits
2. All MR-3 applications for prospecting approvals except as follows:
  - A. Those which do not involve any land disturbance;
  - B. Those which involve channel sampling along existing roadways, trails tramways or existing benches, and where excavation by heavy equipment is not required for access or sampling;
  - C. Those which involve only core drilling and are less than ten acres;
  - D. Those in which land disturbance is proposed only on slopes of twenty degrees (20°) or greater in steepness.
3. All MR-17 applications for renewal of existing permits except as follows:
  - A. Those on which all projected land disturbance has occurred prior to the renewal date;
  - B. Those on which mining and/or land disturbance is not completed, but is documented to have had a prior SHPO review with findings of no existence of, or no effect on, historic or cultural resources.
4. All incidental boundary revisions (IBR's) which involve more than five acres of land disturbance, <sup>1</sup>unless such land disturbance borders along the original permit boundary, and is not a unit extension of the permit boundary as an appendage to the permit.<sup>2</sup>

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<sup>1</sup> DEP will maintain a record of all IBR's which are not transmitted to SHPO, and will provide to SHPO a monthly listing of such IBR's and other permitting actions. After six months from the effective date of this policy, SHPO will advise DEP of any recommended changes of the types of IBR applications which should be reviewed.

<sup>2</sup> Examples of unit extensions or appendages to the permit are: new roads, fills, staging or storage areas, new portals, etc. Proposed disturbances of greater than five acres on ridgetops or valley floors are subject to SHPO review regardless of purpose.

## AGREEMENT

This tripartite *Agreement* is entered into this 16<sup>th</sup> day of October, 1998, to be effective October 16<sup>th</sup>, 1998, by and between the Office of Mining and Reclamation (OMR), the Office of Abandoned Mine Lands and Reclamation (AMLR) within the Division of Environmental Protection, and the State Historic Preservation Office (SHPO) within the Division of Culture and History of the West Virginia Department of Education and the Arts.

1. Purpose

The OMR has the responsibility for processing all permit applications and related permitting actions for surface coal mining operations in the State.

The SHPO has the responsibility to review, comment, and make recommendations on such permitting and permit-related actions where such actions impact cultural or historic resources.

The AMLR has the responsibility for site selection, project planning, site development, and quality control for the reclamation of abandoned mine lands throughout the state.

The SHPO has the responsibility to review, comment and make recommendations on reclamation plans and related construction projects where such activities impact cultural or historic resources.

In pursuit of its responsibility, the SHPO has developed and maintains a data base and inventory of cultural and historic sites throughout the state which are listed or eligible for listing on the National and State Registers of Historic Places. It also maintains an inventory of archeological sites throughout the state. In addition to the listed and known sites of cultural and historic importance, there are other sites throughout the state which may be eligible for listing on the historic registers or may be important archeological sites which have not yet been identified.

The OMR and AMLR have only limited knowledge of such resources and are not privileged to the SHPO information because of the potential for vandalism or looting of such sites should such information become of public record. However, without some way of availing itself of this information, OMR and AMLR cannot carry out their programmatic objectives.

The SHPO does not have the necessary financial resources and complete inventory information to provide, in a timely manner, the required review and comment on each permit application and project plan required of OMR and AMLR under state and federal law.

Therefore, OMR and AMLR wish to enter into a contractual agreement to pay SHPO for performing such services at an agreed-upon annual rate through an interdepartmental transfer of funds. The services to be performed will be in accordance with the terms and conditions set forth below.

2. Scope

The SHPO will perform the functions necessary, including field investigations, to review permit applications for surface mining operations and for project plans on reclamation of abandoned mine lands in the state. Such functions will include the following:

- A. Provide OMR and AMLR with written findings of the existence of cultural and historic sites within the affected area or adjacent areas that are listed or eligible for listing on the National or State Registers of Historic Sites.
- B. Provide OMR and AMLR with written findings of the existence of known archeological sites within the affected area or adjacent areas.
- C. Provide OMR and AMLR with written findings of important cultural, historic, and archeological sites, including the results of any necessary field investigations, which may exist within the affected area or adjacent areas.
- D. Provide OMR and AMLR with written comments and recommendations on the appropriate actions that SHPO believes to be necessary to protect the subject sites or resources.
- E. Consult with OMR and AMLR with regard to appropriate actions to be taken to protect the site or resource, or to establish its existence.
- F. Written findings are to be delivered to OMR and AMLR in a timely fashion.

3. Terms and Conditions


The term of this *Agreement* is from October 1, 1998 through September 30, 1999. The term of this *Agreement* may be extended through September 30, 2001, by mutual agreement of all parties. The terms and conditions of the *Agreement* may be amended upon mutual agreement of all parties. This *Agreement* may be terminated within thirty days of written notice by any party.

4. Payment


The OMR and AMLR will pay SHPO at an annual rate of seventy thousand dollars (\$70,000.00) to be paid in increments of five thousand eight hundred thirty-three dollars and thirty-three cents (\$5,833.33) monthly throughout the term of the *Agreement*. OMR will pay 50% of this rate and AMLR will pay 50%. Such payment will be through intergovernmental transfer of funds (IGT).

This *Agreement* is consummated and executed by the undersigned:

10/23/98  
Date

  
Michael P. Miano, Director  
Division of Environmental Protection

10/11/98  
Date

  
Renay Conlin, Commissioner  
Division of Culture and History